
(2009) 12 AHC CK 0382
In the Allahabad High Court
Case No : Writ A. No. 14263 of 2008

Mustakeem

APPELLANT

Vs

Nagar Palika Parishad and others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30(2)

Citation : (2009) 12 AHC CK 0382

Hon'ble Judges : Shishir Kumar, J

Judgement

Shishir Kumar, J.

Heard Sri Vivek Saran, learned counsel for petitioner and Sri Yogesh Kumar Singh, Advocate holding brief of Sri Amit Malik, learned counsel appearing for respondents.

This writ petition has been filed for quashing the orders passed by revisional court dated 15.2.2008 (Annexure 9 to writ petition).

Petitioner submits that he took a property having House no.112 (At present House No.99) having an area of 300 sq.metres at the rate of Rs.350/ per month from late Hari Singh in the year 1990 and rent was being paid by petitioner. In the year 1991, respondent no.1 claims that this property belongs to him and Sri Hari Singh has been restrained by the order of the District Magistrate, Meerut from selling out the property. Sri Hari Singh wanted to dispossess the petitioner, then a suit was filed as Suit No.138 of 1999 with a relief that petitioner may not be ejected from property in dispute without following the process of law. Trial court after considering the case has granted injunction order in favour of petitioner. It is also submitted that respondent No.1 has also appeared in the said suit filed his written statement and disclosed that property in dispute is a nazul property.

In such circumstances, as there was a dispute between respondent No.1 and

respondent Nos. 2 to 5 that who is the owner of property in dispute, in such circumstances, petitioner made an application under Section 30 Sub Clause 2 of the Act No.13 of 1972 before competent authority to permit petitioner to deposit rent, as there was a dispute. The competent authority has allowed the application and directed petitioner to deposit the same in spite of the objection raised by respondents. Sri Hari Singh aggrieved by aforesaid order filed a revision but revisional court by the order impugned has allowed the revision and set aside the order passed by court below directing petitioner to pay rent to respondent Nos. 2 to 5. Hence the present writ petition.

Learned counsel for petitioner submits that from the record, it is clear that there is a dispute regarding property. Respondent No.1 claiming that this property belongs to him and respondent Nos. 2 to 5 claims that they are the owners. Therefore, unless and until it is decided, rent cannot be paid to either to respondent no.1 or to respondent Nos. 2 to 5. Revisional court has not considered the said aspect of the matter and has allowed the revision without taking into consideration this fact.

I have considered the submissions made on behalf of parties and have perused the record. From the record it is clear that Nagar Palika respondent No.1 is claiming that this property is a nazul property, therefore, respondent No.2 to 5 are not the owners of the property. At one time, respondent Nos.2 to 5 is also claiming that they are the owners of the property. In the suit filed by petitioner, an objection has also been filed by respondent No.1. Further the District Magistrate vide its order dated 16.7.1999, has restrained Sri Hari Singh, father of respondent No. 2 to 5 from selling out the property. Therefore, in my opinion, there was a dispute that who is the owner of the property. In such circumstances, revisional court ought to have seen that in case there is a dispute then deposit of rent under section 30 Sub Clause 2 is necessary and therefore rightly the prescribed authority has permitted the petitioner to deposit the same under Section 30 Sub Clause 2. Revisional court has not considered the said issue and has allowed the revision and has set aside the order passed by prescribed authority. From the counter affidavit filed on behalf of respondent No.1 as well as respondent Nos. 2 to 5, it is clear that there is a dispute regarding ownership of the property in question. Para 5 of counter affidavit filed on behalf of respondent No.1 and paragraph 27 of the counter affidavit filed on behalf of respondent Nos. 2 to 5 are being quoted below:

"5. That in reply to the contents of paragraph no.3 of the writ petition it is hereby submitted that the same as stated are wrong hence denied. It is however further submitted that alleged disputed property is constructed over Khasra no.2134 of which the answering respondent is the owner as the same being Nazul land. Hence the answering respondent is entitled to the rent proceeds and the same should be deposited with the answering respondent."

"27. That the answering respondent are entitled to get the damage and balance of the rent from the petitioner."

In such circumstances, it is clear that there is a dispute. therefore, revisional court ought to have considered this aspect of the matter and should not have interfered.

In view of aforesaid fact, writ petition is allowed. The order passed by the revisional court dated 15.2.2008 (Annexure 9 to writ petition) is hereby set aside.